

Hon. David G. Estudillo

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

HEATHER DOREEN BENDICKSON,

Plaintiff,

v.

VROOM, INC., and ALLY FINANCIAL INC.

Defendants.

CASE NO. 3:21-cv-05762-DGE

**MOTION TO COMPEL ARBITRATION  
AND STAY PROCEEDINGS OF  
DEFENDANTS VROOM, INC. AND  
ALLY FINANCIAL, INC.**

NOTE ON MOTION CALENDAR:  
February 25, 2022

**I. INTRODUCTION**

Defendants VROOM, INC. (“Vroom”) and ALLY FINANCIAL, INC. (“Ally”) (collectively, “Defendants”), by and through undersigned counsel, respectfully move this Court for an order compelling arbitration and staying all further proceedings until arbitration has been completed in accordance with the terms of the arbitration agreement entered into by Plaintiff HEATHER BENDICKSON (“Plaintiff”) and Defendants pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. §1, et seq.

**II. STATEMENT OF FACTS**

On September 5, 2020, Plaintiff signed a Motor Vehicle Retail Installment Sales Contract (“Sales Contract”) for the purchase of a 2019 Kia Sportage (“Kia”) from Vroom, which Sales Contract was subsequently assigned by Vroom to Ally. The Sales Contract required that Plaintiff sign just below the Agreement to Arbitrate which provides as follows:

**MOTION TO COMPEL ARBITRATION  
AND STAY PROCEEDINGS - 1**  
3:21-cv-5762-DGE

LORBER, GREENFIELD & POLITO, LLP  
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Bellevue, WA 98005  
Telephone (206) 832-4900

1 You agree that, pursuant to the Arbitration Provision on page 6 of this contract,  
 2 you or we may elect to resolve any dispute by neutral, binding arbitration and not  
 3 by a court action. See the Arbitration Provision for additional information  
 concerning the agreement to arbitrate.<sup>1</sup>

4 Plaintiff signed directly underneath that provision, thereby attesting that she agreed to the  
 5 Arbitration Provision.

6 Page 6 of the Sales Contract contains the full Arbitration Provision and in relevant part  
 7 provides:

8 Any claim or dispute, whether in contract, tort, statute or otherwise (Including the  
 9 interpretation and scope of this Arbitration Provision, and the arbitrability of the  
 10 claim or dispute), between you and us or our employees, agents, successors or  
 11 assigns, **which arises out of or relates to your credit application, purchase or  
 12 condition of this vehicle, this contract or any resulting transaction or  
 13 relationship (including any such relationship with third parties who do not  
 sign this contract)** shall, at your or our election, be resolved by neutral, binding  
 arbitration and not by a court action. . . **Any arbitration under this Arbitration  
 Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et  
 seq.)** and not by any state law concerning arbitration.

14 (Emphasis added.)

15 Plaintiff has never disputed the validity of the Sales Contract, nor has she disputed her  
 16 signatures on the Sales Contract.

17 A dispute arose between Plaintiff and Defendants arising out of the sale of the Kia and  
 18 Plaintiff filed suit on September 1, 2021, in Pierce County Superior Court alleging multiple  
 19 claims, including breach of contract, breach of warranty, negligent misrepresentation, and  
 20 violations of the Consumer Protection Act.<sup>2</sup> Plaintiff did not make any attempt to arbitrate her  
 21 disputes prior to the filing of her lawsuit.

22 Ally removed Plaintiff's Complaint to this Court on October 14, 2021. Vroom filed its  
 23 Answer on October 21, 2021 and asserted an affirmative defense that this matter should be  
 24 arbitrated pursuant to the Sales Contract.<sup>3</sup> Ally also filed its Answer on October 21, 2021.<sup>4</sup>  
 25 Defendants began settlement negotiations with Plaintiff by sending an initial offer on  
 26 \_\_\_\_\_

27 <sup>1</sup> Sales Contract, Exhibit A to Declaration of Ofelia A. Granados.

<sup>2</sup> Complaint for Damages, Exhibit B to Declaration of Ofelia A. Granados.

<sup>3</sup> Answer and Affirmative Defenses, Exhibit C to Declaration of Ofelia A. Granados.

<sup>4</sup> Answer and Affirmative Defenses, Exhibit D to Declaration of Ofelia A. Granados.

1 October 19, 2021. Plaintiff responded with a demand on November 2, 2021, to which  
 2 Defendants presented a counteroffer on November 4, 2021. Additional demands and  
 3 counteroffers have been exchanged since that time, with the most recent demand received on  
 4 January 16, 2021 with a counteroffer presented by Defendants on January 25, 2022.  
 5 Negotiations remain ongoing.

### 6 **III. ISSUE PRESENTED**

7 Whether the Court should order the parties to arbitrate its dispute arising out of the sale of  
 8 the Kia and stay the proceedings until arbitration has been completed.

### 9 **IV. EVIDENCE RELIED UPON**

10 Defendants rely on the Declaration of Ofelia A. Granados, which is filed herewith, and  
 11 any pleadings filed with the court.

### 12 **V. AUTHORITY AND ARGUMENT**

#### 13 **1. The Arbitration Provision of The Sales Contract Is Valid and Enforceable.**

14 A party may petition the court for an order directing that arbitration proceed for the  
 15 action filed where there is a written agreement to arbitrate. 9 U.S.C.A. § 4. Written arbitration  
 16 provisions are generally valid, irrevocable, and enforceable. 9 U.S.C.A. § 2. This strong  
 17 language manifests a “liberal federal policy favoring arbitration agreements.” *Moses H. Cone*  
 18 *Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S. Ct. 927 (1983); *see also*  
 19 *DIRECTV, Inc. v. Imburgia*, 136 S.Ct. 463, 193 L.Ed. 365, 375 (2015) (reaffirming the  
 20 obligation of all courts to give due regard to the federal policy favoring arbitration). A court  
 21 should compel arbitration when a moving party proves that there is a contractual agreement to  
 22 arbitrate and that the claim at issue is arbitrable. *Howsam v. Dean Witter Reynolds, Inc.*,  
 23 537 U.S. 79, 83 (2002); *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943 (1995). Claims  
 24 are arbitrable when they are not subject to any legal constraint. *Mitsubishi Motors Corp. v. Soler*  
 25 *Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985).

26 Federal law reflects a strong public policy favoring arbitration agreements. *See Moses H.*  
 27 *Cone*, 460 U.S. at 24-25) (noting that the Federal Arbitration Act [FAA] “is a congressional  
 28 declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state

1 substantive or procedural policies to the contrary”). “The principal purpose of the [FAA] is to  
2 ensure private arbitration agreements are enforced according to their terms.” *AT&T Mobility*  
3 *LLC v. Concepcion*, 563 U.S. 333 (2011) (quotations omitted). The Supreme Court has  
4 recognized that Congress, in enacting the FAA, meant to exercise the full extent of its powers  
5 under the commerce clause of the Constitution to ensure that the FAA applies to any arbitration  
6 contract involving interstate commerce. *Allied-Bruce Terminix Companies Inc. v. Dobson*,  
7 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995).

8 Thus, courts are directed to “rigorously enforce agreements to arbitrate” according to their  
9 terms. *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (internal quotations  
10 omitted) (citation omitted); *see AT&T Mobility LLC*, 563 U.S. at 339. “[A]ny doubts concerning  
11 the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone*,  
12 460 U.S. at 24-25. When interpreting arbitration agreements under the FAA, federal courts  
13 exercise an overwhelming presumption in favor of arbitration. The FAA places arbitration  
14 agreements on equal footing with all other contracts and sets forth a national policy in favor of  
15 arbitration. *See Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006) (“To  
16 overcome judicial resistance to arbitration, Congress enacted the [FAA], Section 2 embodies the  
17 national policy favoring arbitration and places arbitration agreements on equal footing with all  
18 other contracts.”).

19 The transaction in this case constituted an interstate credit transaction imbuing it with the  
20 necessary interstate character. Ally is a Delaware corporation with its principal place of business  
21 in Michigan. Vroom is a Delaware corporation with its principal place of business in New York.  
22 Plaintiff is a citizen of Washington. The Sales Contract is governed by Federal and Texas law.  
23 Thus, the FAA controls the enforcement of the Arbitration Agreement and arbitrability of  
24 Plaintiff’s claims. Further, Plaintiff has not disputed that the transaction in question involves  
25 interstate commerce within the meaning of the FAA. Thus, the strong federal policy favoring  
26 arbitration dictates that the arbitration agreement in this case be enforced.

27 The FAA “leaves no place for the exercise of discretion by a district court, but instead  
28 mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which

1 an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213,  
 2 218 (1985) (emphasis in original). In deciding whether to compel arbitration, a court’s inquiry is  
 3 generally limited to “two ‘gateway’ issues: (1) whether there is an agreement to arbitrate  
 4 between the parties; and (2) whether the agreement covers the dispute.” *Brennan v. Opus Bank*,  
 5 796 F.3d 1125, 1130 (9th Cir. 2015) (citing *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79,  
 6 84 (2002)).

7 “In determining whether a valid arbitration agreement exists, federal courts ‘apply  
 8 ordinary state-law principles that govern the formation of contracts.’” *Nguyen v. Barnes &  
 9 Noble Inc.*, 763 F.3d 1171, 1175 (9th Cir. 2014) (quoting *First Options of Chi., Inc. v. Kaplan*,  
 10 514 U.S. 938, 944 (1995)).

11 The Sales Contract provides that federal law and Texas law “apply to this contract.”  
 12 Under Texas law, the party urging arbitration must show that the arbitration agreement meets all  
 13 requisite contract elements for a valid and binding contract. *IHS Acquisition No. 131, Inc. v.  
 14 Iturralde*, 387 S.W.3d 785, 791 (Tex. App. -El Paso, 2012) (citation omitted). Formation of a  
 15 binding contract requires: “(1) an offer; (2) acceptance in strict compliance with the terms of the  
 16 offer; (3) a meeting of the minds; (4) each party’s consent to the term; and (5) execution and  
 17 delivery of the contract with the intent that it be mutual and binding.” *IHS*, 387 S.W.3d at 791  
 18 (citation omitted). Here, there is no dispute that there is a valid contract between Plaintiff and  
 19 Defendants and that the claims are within the scope of the Arbitration Provision. The Arbitration  
 20 Provision requires arbitration for any disputes Plaintiff has with Vroom and Ally (as assignee of  
 21 the Sales Contract) that arise out of contract, tort, or statute. Plaintiff clearly signed the  
 22 Arbitration Provision on page 2 of the Sales Contract. Courts have long held that one who signs  
 23 a contract is “conclusively presumed to know its contents and to assent to them . . .” *Tjart v.  
 24 Smith Barney, Inc.*, 107 Wash. App. 885, 896, 28 P.3d 823 (2001). Plaintiff is bound to this  
 25 provision and failed to follow the proper procedure of selecting an arbitrator to hear the claims  
 26 asserted in her Complaint. The claims asserted by Plaintiff are arbitrable and the court should  
 27 compel the parties to engage in arbitration pursuant to the contract.

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1 **2. A Stay of The Proceedings Is Appropriate in This Case.**

2 Upon application of one of the parties, the court “shall” stay the proceedings until the  
 3 arbitration has been conducted in performance with the terms of the agreement, as long as the  
 4 party seeking the stay is not in default in proceeding with arbitration. 9 U.S.C.A. § 3. “It is  
 5 axiomatic that the mandatory term ‘shall’ typically ‘creates an obligation impervious to judicial  
 6 discretion’. *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998).”  
 7 The Court is required to stay proceedings if the matter is removed to arbitration and as such, a  
 8 stay should be granted until the arbitration has been completed.

9 **VI. CONCLUSION**

10 Based on the foregoing, this Court should grant Defendants’ motion to compel  
 11 arbitration, order the parties to participate in arbitration with the American Arbitration  
 12 Association, stay the current proceedings pending the outcome of the arbitration, and grant  
 13 Defendants such other and further relief as this Court deems appropriate and just.

14 DATED this 28<sup>th</sup> day of January 2022.

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15  
 16 By: /s/ Ofelia A. Granados

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**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing **MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS OF DEFENDANTS VROOM, INC. AND ALLY FINANCIAL, INC.** on the following parties by electronic transmission through the CM/ECF system. Upon completion of said transmission of said documents, a receipt is issued to filing party acknowledging receipt by the CM/ECF system. Once CM/ECF has served all designated recipients, proof of electronic service is available to the filing party. I am readily familiar with the business' practice for filing electronically, and the document will be electronically filed that same day in the ordinary course of business following ordinary business practices.

Steven C. Hathaway, WSBA #24971 LAW OFFICES OF STEVEN C. HATHAWAY 3811 Consolidation Avenue Bellingham, WA 98229 <a href="mailto:shathaway@expresslaw.com">shathaway@expresslaw.com</a>	<b>Attorneys for Plaintiff</b> <b>HEATHER DOREEN BENDICKSON</b>
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SIGNED this 28<sup>th</sup> day of January 2022.

/s/ Teri A. Moore

Teri A. Moore, Legal Assistant